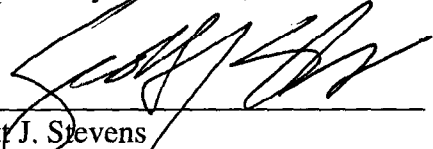


Date: September 9, 2002

Respectfully submitted,

By 
Scott J. Stevens
Woodard, Emhardt, Naughton,
Moriarty & McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317) 634-3456
(317) 637-7561 (facsimile)

37004-8:182616

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

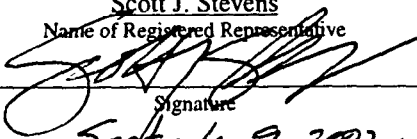
In re trademark application of:)	Examining Attorney:
)	Michael J. Souders
Consolidated Specialty Restaurants, Inc.)	
)	Law Office 115
Serial No. 75/857,797)	
)	
Filed November 24, 1999)	
)	
COLORADO STEAKHOUSE)	
And Design)	September 9, 2002

REQUEST FOR RECONSIDERATION

BOX RESPONSE NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

In response to an Official Action mailed March 8, 2002, Applicant respectfully requests that the Examining Attorney reconsider the refusal to register on the basis of the following arguments and remarks.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Dr., Arlington, VA 22202-3513 on, September 9, 2002.	
Scott J. Stevens	
Name of Registered Representative	
	
Signature	
September 9, 2002	
Date of Signature	

COPY

The Examining Attorney continues to refuse registration under Section 2(e)(3) of the Trademark Act alleging that the mark sought to be registered is primarily geographically deceptively misdescriptive of the services, and has made that refusal final. Applicant respectfully disagrees with the Examining Attorney's interpretation of Section 2(e)(3).

The Examining Attorney has stated that "nothing about the applicant's services originate in Colorado." and "[T]he mark is deceptively misdescriptive precisely because the applicant has promoted a connection with the State of Colorado where none exists." The Examining Attorney's statements suggest that any restaurant chain that has a geographic term in its name must have a restaurant or have its corporate headquarters in that particular geographic location to obtain a trademark registration for their name. This analysis fails to recognize the current nature of restaurant services in the United States today. Restaurants are established to portray or suggest a theme, such as a rock and roll theme for the Hard Rock Café, for example, or a theme that suggests a style, cuisine, atmosphere, etc., common to a unique or well known city or region. A customer who visits a restaurant having a geographic name and theme is expecting to find an atmosphere, ambience or décor that suggests to them the type of restaurant they would expect to find in the particular city or region identified in the name. A person residing in New Hampshire or Alabama, for example, who has never ventured outside their own state, and who patronizes a restaurant named the California Diner in their home state expects to find decorations and food of the type that they have come to associate with the State of California, that, in their own mind, must be what California food and restaurants are like. It is irrelevant to that patron, as it should be irrelevant to the issue of

registrability of the present mark, whether or not the California Diner had an actual location in the State of California. The association and perceived authenticity of the restaurant is determined by whether or not the restaurant concept and theme fairly represents what customers of the restaurant believe to be an accurate portrayal of their understanding of the character of the location for which the restaurant is named and not whether an actual restaurant by that name exists in a location possibly never to be visited by the customer. As an example of this analysis being accepted by the USPTO, the mark OUTBACK STEAKHOUSE (U.S. Reg. No. 1,523,949, a copy of the USPTO's TESS website as downloaded by the undersigned being attached hereto), which includes a distinctive geographic term clearly associated with the country of Australia, was registered in 1989 by Multi-Venture Partners, Inc., a Florida corporation, even though there was no restaurant by that name located in Australia until late 2000 or early 2001. It is reasonable that the mark was allowed registration based upon a determination that the mark is not descriptive, i.e., a determination that the consuming public would understand that the term "OUTBACK" has significance only with respect to the restaurant's Australian concept and ambiance, and not on the fact that there was an actual physical association with the country of Australia, e.g., the location of the company's headquarters. As another example, a patron of the restaurant bearing the registered trademark THE CLADDAGH IRISH PUB (U.S. Reg. No. 2,564,487, a copy of the USPTO's TESS website as downloaded by the undersigned being attached hereto), registered by an Ohio resident individual, would not expect that this restaurant was a chain with its original location in Ireland, but would only expect that the ambiance and décor, i.e., the concept, would match their expectation of the appearance of an actual Irish pub. The name, therefore, provides an association with the geographic identifier by way

of its concept or theme only, in an identical manner in which Applicant's mark COLORADO STEAKHOUSE and Design does. It should be sufficient for registrability purposes that the concept of the restaurant, which may include its decorations or furnishing, originate from the specified geographic location.

The foregoing examples illustrate that restaurant services should not be viewed in the same manner as geographically identified goods, e.g., Maine lobsters or Wisconsin cheese, where those names are tantamount to an indication of source. Restaurant services incorporate many more elements or components than just an indication of the location of the founding restaurant or the company's headquarters, including, but not limited to, the source of the food, recipes, furniture, decorations, and the employees. Restaurant customers will not believe that each and every component that comprises a restaurant or restaurant service comes from or originates in the geographic location of the restaurant's name. Just as it is unlikely that beef served in a Texas Roadhouse restaurant located in Colorado would actually come from Texas, since, as pointed out by the Examining Attorney, Colorado is a producer of beef, it is just as unlikely that a patron of this restaurant in Colorado would think the beef or the food servers did, in fact, come from Texas, as they would know that their own state produced beef and they would presume that the meat for the restaurant in Colorado would likely have come from Colorado, not Texas, just as they would expect that the wait staff would have been hired from the local community. The fact that neither the food nor the employees come from Texas, or the fact as to whether or not the Texas Roadhouse chain originated in Texas, is unimportant to the restaurant customer who only wants to experience what they have come to associate with an authentic Texas ambiance. These facts should not and do not, in this case, change the registrability of the name TEXAS ROADHOUSE (U.S. Reg. No.

2,231,309, a copy of the USPTO's TESS website as downloaded by the undersigned being attached hereto), which is registered to a corporation headquartered in Kentucky. Similarly, the fact that many of its recipes may have originated in the United States does not change the registrability of the name CHINA STAR (U.S. Reg. No. 1,913,984, a copy of the USPTO's TESS website as downloaded by the undersigned being attached hereto) for restaurant services by a corporation in Utah. In the arena of restaurant services, the location of the source of the concept and the customer's belief as to the authenticity of that concept should be the controlling issue with respect to registrability. Evaluation of registrability using any other criteria runs counter to the manner in which restaurants are developed, marketed and operated, and is seemingly at odds with the criteria used by the USPTO for determining registrability of geographically-named restaurants. As stated above, there are many components and elements that make up a restaurant, not all of which can originate from the geographic locale that may appear in its name. For example, food and employees are conveniently and necessarily obtained locally. Building materials are also obtained locally for economic reasons. Under the Examining Attorney's reasoning, virtually everything associated with the restaurant must originate in the named geographic location for the mark to be registrable, which is a requirement that necessarily cannot be met. The Examining Attorney has not indicated which of the restaurant components need to originate in the geographically-named location, and which, if any, do not. It is Applicant's contention that the only realistic criteria to be used to evaluate the registrability of geographically-named restaurants is whether or not the concept or theme originates in the relevant geographic locale. To the customer, it is only the concept or theme that provides an association between the name and the restaurant itself. Other components, such as the source of the food or menu ingredients, or the

hometowns of the servers, are unimportant to the consumer and their actual source of origin do not impact the consumer's impression of the "origin" of the restaurant. For that reason, Applicant's mark COLORADO STEAKHOUSE and Design should be allowed, as the restaurants in connection with which the name is used definitely have their concept, as well as some of their decorations and furnishings, originating in Colorado. The restaurants carrying the COLORADO STEAKHOUSE and Design trademark do, contrary to the Examining Attorney's statement, have a connection with the State of Colorado, just as the Outback Steakhouse has a connection to Australia, The Claddagh Irish Pub has a connection to Ireland, and China Star has a connection to China.

Applicant is contemporaneously filing a Notice of Appeal to the TTAB. It is Applicant's understanding that the time periods associated with an Appeal to the TTAB will be suspended pending the Examining Attorney's review of this Request for Reconsideration.

Based on the preceding remarks, it is believed that the Examining Attorney's reasons for refusal to register have been overcome, and reconsideration of such refusal is respectfully requested.

Respectfully Submitted

By: _____


Scott J. Stevens

Woodard, Emhardt, Naughton

Moriarty & McNett

Bank One Center/Tower

111 Monument Circle, Suite 3700

Indianapolis, Indiana 46204-5137

(317)634-3456



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Sat Sep 7 04:37:19 EDT 2002

[PTO HOME](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [BOTTOM](#) [HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

Check Status (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	OUTBACK STEAKHOUSE
Goods and Services	IC 042. US 100. G & S: RESTAURANT AND BAR SERVICES. FIRST USE: 19880315. FIRST USE IN COMMERCE: 19880315
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73720810
Filing Date	April 6, 1988
Published for Opposition	November 15, 1988
Registration Number	1523949
Registration Date	February 7, 1989
Owner	(REGISTRANT) MULTI-VENTURE PARTNERS, INC. CORPORATION FLORIDA SUITE 204 550 NORTH RIO STREET TAMPA FLORIDA 33609 (LAST LISTED OWNER) OUTBACK STEAKHOUSE OF FLORIDA, INC. CORPORATION BY CHANGE OF NAME FROM FLORIDA 550 NORTH RIO STREET, SUITE 204 TAMPA FLORIDA 33609
Assignment Recorded	ASSIGNMENT RECORDED
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKHOUSE" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).

**Live/Dead
Indicator**

LIVE

[PTO HOME](#)[TRADEMARK](#)[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[TOP](#)[HELP](#)



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Sat Sep 7 04:37:19 EDT 2002

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	BOTTOM	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

[Logout](#)

Please logout when you are done to release system resources allocated for you.

[Start](#)List At:

OR

[Jump](#)to record: **Record 1 out of 3**[Check Status](#)

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	THE CLADDAGH IRISH PUB
Goods and Services	IC 042. US 100 101. G & S: RESTAURANT AND BAR SERVICES. FIRST USE: 20000708. FIRST USE IN COMMERCE: 20000821
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76073859
Filing Date	June 19, 2000
Filed ITU	FILED AS ITU
Published for Opposition	April 17, 2001
Registration Number	2564487
Registration Date	April 23, 2002
Owner	(REGISTRANT) Blair, Kevin INDIVIDUAL UNITED STATES 701 East Whipp Road Centerville OHIO 45459
Attorney of Record	Margaret A. Lawson
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "IRISH PUB" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Sat Sep 7 04:37:19 EDT 2002

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	BOTTOM	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

Logout

Please logout when you are done to release system resources allocated for you.

StartList At:

OR

Jumpto record: **Record 2 out of 6****Check Status***(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)***Typed Drawing**

Word Mark	TEXAS ROADHOUSE
Goods and Services	IC 042. US 100 101. G & S: restaurant services. FIRST USE: 19930217. FIRST USE IN COMMERCE: 19930217
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75084417
Filing Date	April 5, 1996
Published for Opposition	October 13, 1998
Registration Number	2231309
Registration Date	March 16, 1999
Owner	(REGISTRANT) TEXAS ROADHOUSE HOLDINGS LLC LIMITED LIABILITY COMPANY KENTUCKY 9000 Wessex Place, Suite 301 Louisville KENTUCKY 40222
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	P WESTON MUSSELMAN JR
Prior Registrations	1833533
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ROADHOUSE" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Sat Sep 7 04:37:19 EDT 2002

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	BOTTOM	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

[Logout](#) Please logout when you are done to release system resources allocated for you.[Start](#) List At: OR [Jump](#) to record: **Record 4 out of 6****Check Status***(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)*Typed Drawing

Word Mark	CHINA STAR
Goods and Services	IC 042. US 100. G & S: restaurant services. FIRST USE: 19930504. FIRST USE IN COMMERCE: 19940504
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74550610
Filing Date	July 18, 1994
Published for Opposition	May 30, 1995
Registration Number	1913984
Registration Date	August 22, 1995
Owner	(REGISTRANT) China Star Express, Inc. CORPORATION UTAH 48 Market Street, Suite 250 Salt Lake City UTAH 84101
Attorney of Record	M. Reid Russell
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHINA" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Sat Sep 7 04:37:19 EDT 2002

[PTO HOME](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [BOTTOM](#) [HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[Check Status](#) (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	OUTBACK STEAKHOUSE
Goods and Services	IC 042. US 100. G & S: RESTAURANT AND BAR SERVICES. FIRST USE: 19880315. FIRST USE IN COMMERCE: 19880315
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73720810
Filing Date	April 6, 1988
Published for Opposition	November 15, 1988
Registration Number	1523949
Registration Date	February 7, 1989
Owner	(REGISTRANT) MULTI-VENTURE PARTNERS, INC. CORPORATION FLORIDA SUITE 204 550 NORTH RIO STREET TAMPA FLORIDA 33609 (LAST LISTED OWNER) OUTBACK STEAKHOUSE OF FLORIDA, INC. CORPORATION BY CHANGE OF NAME FROM FLORIDA 550 NORTH RIO STREET, SUITE 204 TAMPA FLORIDA 33609
Assignment Recorded	ASSIGNMENT RECORDED
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKHOUSE" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).

**Live/Dead
Indicator**

LIVE

[PTO HOME](#)[TRADEMARK](#)[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[TOP](#)[HELP](#)